



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: Annual Summary of Labor Negotiations **DATE:** October 13, 2009

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

RECOMMENDATION

Accept staff report and public input on Annual Summary of Upcoming Labor Negotiations.

OUTCOME

As recommended by the Sunshine Reform Taskforce and approved by the City Council, this report will provide the public an opportunity to have information related to negotiations in advance of the commencement of labor negotiations and to provide the City Council input.

INTRODUCTION

This memorandum is intended to present a factual perspective on the challenges that the Mayor and Council, the City Administration, labor, business, neighborhood leaders, the City workforce and the community at large continue to face in eliminating the City's looming General Fund structural deficit. It establishes how addressing this challenge relates to labor negotiations in the City of San Jose. Facts alone will not solve the problem. The information presented in this memo sets forth some of the issues associated with the problem that we are facing, specifically the costs to deliver services. These are difficult issues to confront because they can surface negative reactions depending on one's perspective. The pathway to resolution, however, will require a commitment on all sides to continue engaging in difficult conversations and collaborative problem solving approaches, as challenging as this will be. It is not the intent of this memo to make value judgments on the state that the City finds itself in, nor to blame our labor unions and excellent workforce. Its purpose, rather, is to confront the realities of the unprecedented times that we find ourselves in, so that the Mayor and City Council can find a path to providing fiscally sustainable services to the community.

BACKGROUND

Pursuant to the Public Information provisions of the Sunshine Reform Task Force Phase 1 Report approved by the City Council on August 21, 2007, staff is to bring forward to the City Council in open session on an annual basis a summary of labor negotiations for the upcoming year. The purpose of this process is to provide an opportunity for the public to be informed about the City's labor negotiations before the City commences negotiations and to provide the City Council input before the negotiations begin.

This memo provides a summary of background information related to labor negotiations, a summary of bargaining unit information for those bargaining units that the City will be in negotiations with at the end of 2009 and through 2010, personnel cost information, and a summary of labor negotiations cost saving strategies.

The City of San Jose has eleven bargaining units, representing approximately 96% of the workforce. This includes the recently formed bargaining unit of the Association of Legal Professionals of San Jose (ALP). The Memoranda of Agreement (MOA), which are the contracts between the City and the bargaining units, are available on the City's internet site at www.sanjoseca.gov/employeeRelations/moa.asp.

The following chart shows the City's bargaining units, total Full Time Equivalents (FTEs¹) represented by each bargaining unit and the expiration of their current contract.

Bargaining Unit/Union	FTEs	Contract Expiration
San Jose Fire Fighters, IAFF Local 230 (IAFF)	739	06/30/09 ²
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	57	12/10/09
International Brotherhood of Electrical Workers, Local 332 (IBEW)	81	03/06/10
Association of Legal Professionals of San Jose (ALP)	46	N/A
San Jose Police Officers' Association (POA)	1375	06/30/10
International Union of Operating Engineers, Local #3 (OE#3)	818	06/30/10 ³
Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42 and Unit 43	236	06/30/10
Association of Maintenance Supervisory Personnel (AMSP)	86	06/30/10
City Association of Management Personnel (CAMP)	410	06/30/10
Municipal Employees' Federation, AFSCME Local 101 (MEF)	2294	06/30/11
Confidential Employees' Organization, AFSCME Local 101 (CEO)	216	09/17/11
TOTAL	6358	

There are only two bargaining units that have contracts extending through Fiscal Year 2010-2011, the Municipal Employees' Federation (MEF) and the Confidential Employees'

¹ Full Time Equivalents (FTEs) are the combined total number of budgeted full-time positions. For example, one full-time position equals one FTE. Similarly, two half-time positions equal one FTE.

² Although the contract with the San Jose Fire Fighters, Local 230 expired in June 2009, an agreement has not been reached as of the date of this memo.

³ There is no current contract with OE#3, however, the items previously implemented for OE#3 were for Fiscal Year 2009-2010.

Organization (CEO), both of which have 2% general wage increases scheduled. Therefore, for the remainder of 2009 and in 2010, the City will be in negotiations with the following nine bargaining units:

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San Jose Fire Fighters, IAFF Local 230 (IAFF)	739	06/30/09 ²
Association of Building, Mechanical and Electrical Inspectors (ABMEI)	57	12/10/09
International Brotherhood of Electrical Workers, Local 332 (IBEW)	81	03/06/10
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Association of Engineers and Architects, IFPTE Local 21 (AEA) Unit 41/42 and Unit 43	236	06/30/10
Association of Maintenance Supervisory Personnel (AMSP)	86	06/30/10
City Association of Management Personnel (CAMP)	410	06/30/10
TOTAL	3848	

ANALYSIS

General Fund Structural Budget Deficit

The City is entering its ninth year of General Fund shortfalls. In order to achieve a balanced budget for Fiscal Year 2009-2010, the Mayor and City Council were faced with closing an \$84.2 million General Fund deficit. In addition, many of the City's special funds were also impacted by this economic crisis and had significant shortfalls to rectify. Consequently, many difficult decisions were made to balance the Fiscal Year 2009-2010 budget. Many of the City's bargaining units had "true zeroes" for Fiscal Year 2009-2010, which in some cases were achieved through their consent to re-open closed contracts. As a result of this, the City was able to reduce the level of service impacts and position eliminations that would have otherwise been necessary, thus lessening city employee layoffs. The true zeroes saved approximately \$4.6 million in the General Fund and \$7.8 million in all funds and some 55 positions across all City Departments.

For Fiscal Year 2010-2011, the General Fund deficit is projected to be as high as \$91.5 million. Of that amount, \$51.7 million is due to projected increases in the City's contributions to the retirement plans. The actual retirement contribution rates for Fiscal Year 2010-2011 will not be known until actuarial valuations are completed and contribution rates are adopted by the retirement boards, which is anticipated to occur in the next several months. The projected deficit will be updated as new information is available.

Elimination of the Fiscal Year 2010-2011 General Fund deficit and the ongoing structural deficit, once again, requires the City Council to make very difficult decisions. To assist in developing

options and alternatives to present to the City Council in solving the General Fund budget deficit, the following is a basic framework of options:

- I. Reduce per Employee Cost
 - a. Salary (cash compensation)
 - b. Retirement Benefits
 - c. Healthcare/Other Benefits
 - d. Workers' Compensation Costs
- II. Service Reductions/Eliminations
 - a. Reduce Number of Employees (Position Eliminations/Layoffs)
 - b. Implement Alternative Service Delivery Models
 - c. Improve Efficiency
- III. New/Increased Revenue Sources
 - a. Fees and Taxes
 - b. Economic Development-Related Revenue
 - c. Transfers From Other Funds
 - d. Asset Management Program

Since opportunities to generate new/increased revenue to help solve the budget deficit in Fiscal Year 2010-2011 are limited, the focus will be on the other two categories noted above. As personnel costs are approximately two-thirds of General Fund expenditures, there needs to be significant focus in this area. The more savings that can be obtained through reducing per employee cost (Option I), the less service reductions/eliminations (Option II) will be needed to eliminate the structural budget deficit.

City employees are critical to our ability to provide services since without them services cannot be delivered to our community. If the current projected \$91.5 million deficit for Fiscal Year 2010-2011 was solved through position eliminations, this would require the elimination of approximately **763** positions Citywide (sworn and non-sworn positions). However, if there were no impact to sworn positions, this would result in the elimination of approximately **905** non-sworn positions Citywide. To put this in context, this is more than the entire number of General Fund employees in the Library Department and the Parks, Recreation and Neighborhood Services Department. This clearly would have significant impacts not only to the employees affected, but also to the community by the reduction/elimination of City services.

To the extent we can reduce our per employee costs, it will help lessen the reductions/eliminations of services to the community, and thereby lessen the elimination of City jobs. It is important to note that in addition to the General Fund, many other City funds are facing difficult fiscal challenges. For example, the Airport Department continues to deal with significant fiscal challenges and has had to significantly reduce its workforce. Consequently, reducing personnel costs are also important in the other City special funds.

As the City Council is aware, compensation costs (pay and benefits) are subject to the negotiation ("meet and confer") process with our labor unions. Since **96%** of the City workforce is represented by a bargaining unit, reducing the magnitude of service reductions or eliminations

in Fiscal Year 2010-2011 will be heavily dependent on the success achieved through the negotiation process. Given the City's fiscal challenges, negotiations for the rest of 2009 and through 2010 will be challenging for both the City and the unions.

Personnel Costs

Although the City is entering its ninth year of General Fund shortfalls, the City's total compensation costs have grown significantly over this period. The chart below shows the difference in budgeted costs of base payroll, retirement benefits, health/dental benefits and other benefits from Fiscal Year 2000-2001 to 2009-2010. Although the number of FTEs has decreased during this time, the City's average total cost per FTE has increased approximately 63.65% from an average of \$73,581 per FTE in Fiscal Year 2000-2001 to an average of \$120,418 in Fiscal Year 2009-2010, as shown in the chart below.

Citywide Salary & Benefits ^{4 5}					
		2000-2001		2009-2010	Difference
BASE PAYROLL	\$	416,010,420	\$	582,337,708	39.98%
RETIREMENT BENEFITS	\$	63,054,083	\$	137,472,029	118.02%
Federated Retirement	\$	39,409,193	\$	72,534,127	84.05%
Police/Fire Retirement	\$	23,644,890	\$	64,937,902	174.64%
HEALTH/DENTAL BENEFITS	\$	30,317,792	\$	64,197,978	111.75%
Health	\$	24,856,910	\$	57,160,932	129.96%
Dental	\$	5,460,882	\$	7,037,046	28.86%
OTHER BENEFITS	\$	6,608,312	\$	13,566,187	105.29%
(Unemployment & Other Miscellaneous Benefits)					
TOTAL (ALL BENEFITS)	\$	99,980,187	\$	215,236,194	115.28%
GRAND TOTAL	\$	515,990,607	\$	797,573,902	54.57%
Average Total Cost Per FTE	\$	73,581	\$	120,418	63.65%
TOTAL FTE		7,013		6,623	-5.55%

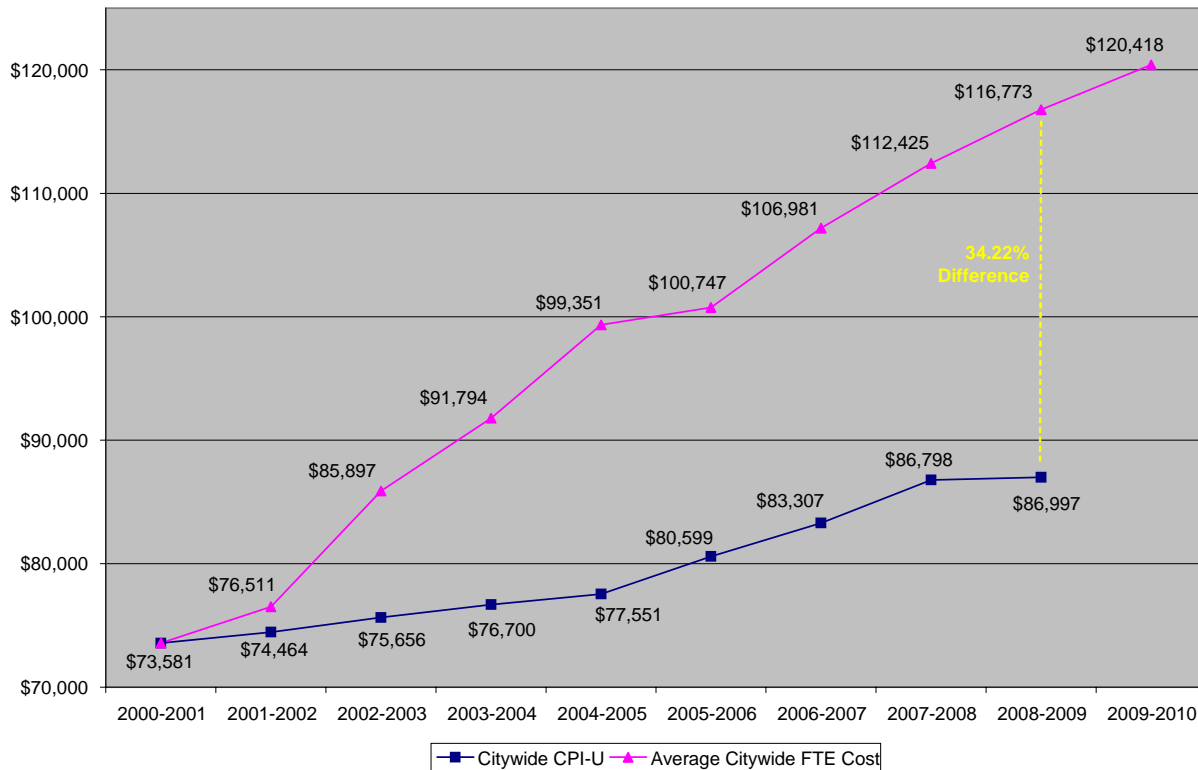
As noted in the chart above, there was a 174% increase in costs for Police and Fire retirement benefits compared to an 84.05% increase in the Federated plan covering other City employees. The City's contribution rates have increased significantly over this period in both retirement plans, but more significantly for the Police and Fire retirement plan.

⁴ **Source:** City of San Jose Salary and Fringe Benefit Costs by Bargaining Unit & Fund for 2000-2001 through 2009-2010 Adopted Budget

⁵ **Note:** Does not include worker's compensation cost or overtime. The figures above are budgeted costs and include the cost of providing paid time off, such as vacation, holidays, personal/executive leave, and sick leave, to the extent that paid leave is taken during the fiscal year. The actual salary and benefit costs of individual employees vary.

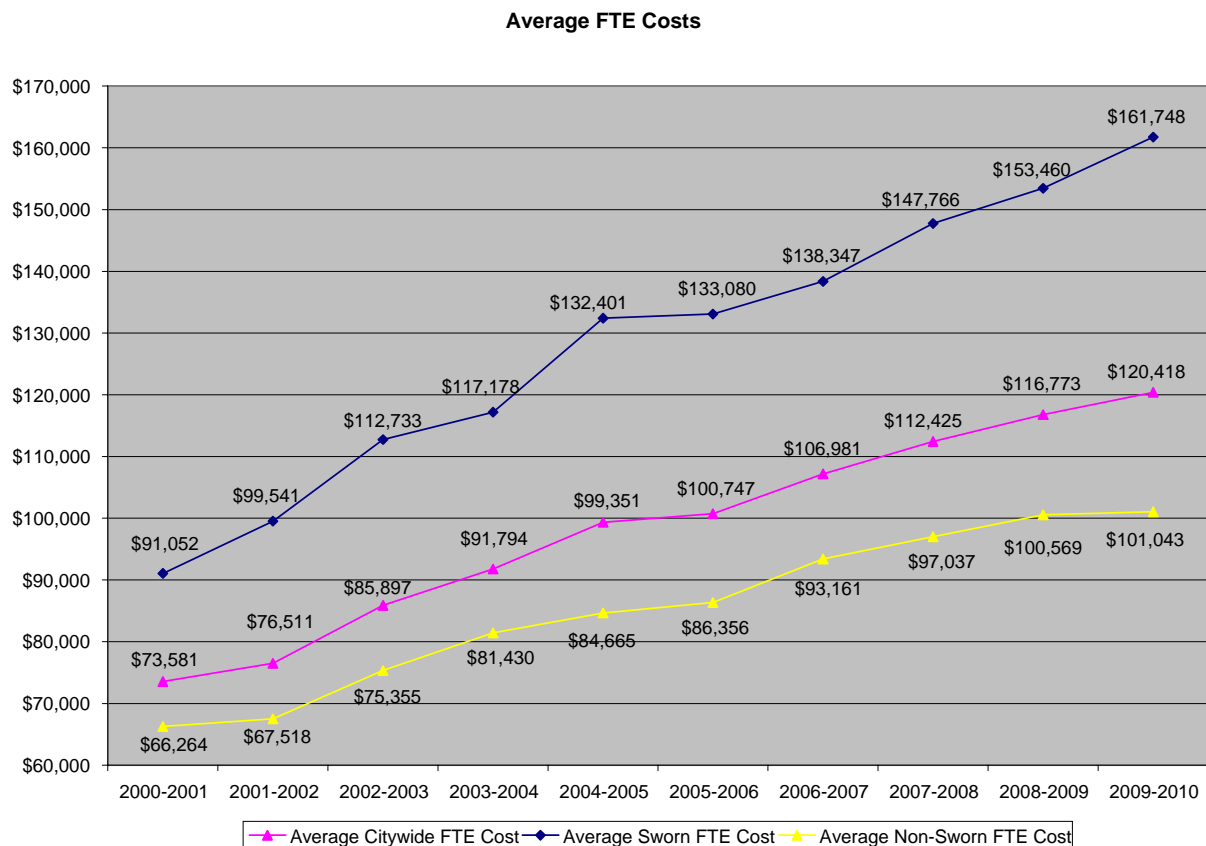
The cumulative increase in the average budgeted FTE cost of 63.65% is the result of increases to base payroll and benefits. For comparison purposes, the chart below shows the increase in average budgeted total compensation costs compared to the average total compensation costs if those costs had increased by the amount of the increase in the San Francisco, Oakland and San Jose Consumer Price Index for All Urban Consumers (CPI-U) ⁶.

Average Citywide FTE Costs versus CPI Changes Over Time



As discussed above, the average Citywide total budgeted cost per FTE has risen significantly from Fiscal Year 2000-2001 to 2009-2010 as a result of the increases in the cost of base payroll, retirement benefits, health/dental benefits and other benefits. The chart below details the increase in the average budgeted total compensation cost for a sworn FTE (employees represented by the San Jose Police Officers' Association and the San Jose Fire Fighters) and the increase in the average budgeted total compensation costs for non-sworn FTEs over the same time period.

⁶ **Note:** CPI-U Data for 2009-2010 will not be released until July 2010.



From Fiscal Year 2000-2001 to Fiscal Year 2009-2010, the average budgeted total compensation costs for a sworn FTE have increased approximately 77.64% and 52.48% for non-sworn FTEs.

Moving from increases in average budgeted total cost per FTE into the context of the upcoming Fiscal Year, using Fiscal Year 2009-2010 Adopted Budget figures, the cost of 1% of base pay with associated fringe benefits, which are benefits that move with pay, is noted below.

Bargaining/Employee Units	1% General Wage Increase	
	General Fund	Total Funds
Citywide*	\$ 5,357,803	\$ 7,216,142
Sworn Only*	\$ 3,140,010	\$ 3,140,010
Non-Sworn Only*	\$ 2,217,793	\$ 4,076,132

*Source: Fiscal Year 2009-2010 Adopted Budget

It should be noted that the forecasted budget for Fiscal Year 2010-2011 does not assume any general wage increases for any of the bargaining units, other than the two bargaining units (MEF and CEO) that have a scheduled 2% wage increase at an estimated cost of \$3.9 million. Any pay increases are subject to negotiation and resources available.

2009-2010 Labor Negotiations Cost Savings Strategies

There have been various cost savings strategies that were identified in the last couple of years, which will be evaluated for the upcoming negotiations. The elimination of the structural deficit was identified by the City Council in 2007 as one of its top priorities.

City Manager's General Fund Structural Deficit Elimination Plan

The City Manager's General Fund Structural Deficit Elimination Plan, which can be found at <http://www.sanjoseca.gov/budget/FY0910/01FiveYrForecast/V-GFStructuralDeficitPlanUpdate.pdf>, identified various items that could be negotiated to reduce personnel costs over time. They include, but are not limited to, the following:

Time, Amount and Method to Reach Maximum Compensation

At present, the City utilizes a traditional public sector salary schedule with five, 5% salary steps for most non-management job classifications that occur automatically unless action is taken to withhold the 5% increase based on poor performance. The typical time it takes an employee to reach the top step of the salary range is three and a half years.

Sick Leave Payment Modifications Upon Retirement

Currently, employees who retire from City service are eligible to receive their accrued sick leave as a cash payment. Employees represented by the San Jose Police Officers Association and the San Jose Fire Fighters union are eligible to receive up to 100% of their sick leave paid out at retirement, with no cap on the number of hours. Employees represented by other bargaining units are eligible to receive up to 75% of their sick leave paid out to a maximum of 1200 hours at retirement. Although payouts of accrued sick leave are common in municipal governments, surveys have shown that the City's sick leave payout benefit is significantly above the average and could be reduced to save personnel costs.

Workers' Compensation Offset for Public Safety

In the disability program for public safety employees, there is an overlap in benefits that occurs after a disability retirement in that public safety employees can receive both Workers' Compensation benefits as well as disability retirement benefits. This overlap does not occur in most California agencies or in the Federated City Employees' Retirement System, which already has a Workers' Compensation Offset. Addressing the overlap in benefits is important given the number of disability retirements in the Police and Fire Department Retirement Plan. According to the San Jose Police and Fire Departments Impact of Working Conditions on Disability Retirement Report dated June 26, 2007, between Fiscal Year 2001-2002 and Fiscal Year 2005-2006, the Fire disability retirement rate was 67% and the Police disability retirement rate was

31%. Separate from the issue of the overlap in benefits, efforts should continue to address the high percentage of public safety disability retirements.

Overtime Eligibility Policies

The overtime eligibility for many City employees is more generous than required by Federal Fair Labor Standards Act (FLSA). For example, paid time off is included in the calculation of overtime and results in sizeable overtime payouts even when an employee has not actually worked more than forty hours in a week. In addition, there are positions that could be deemed as exempt from overtime under the law, but are currently eligible for overtime through contract provisions.

Use of Public Safety Civilian Positions

Given the budget situation, it is imperative that the City fully maximize its current sworn public safety employees in areas requiring their training and expertise and not allocate those resources to work that can be performed by civilian employees at a lower cost. This includes allocating sworn public safety employees currently performing civilian activities to functions requiring sworn public safety employees.

Modify Minimum Fire Staffing Policies

The current minimum staffing requirements in the expired San Jose Fire Fighters contract require certain levels of staffing/deployment models, regardless of the level of activity at certain stations or the number of calls received. Identifying opportunities to streamline staffing and considering alternate service delivery models in the Fire Department would provide the Fire Department flexibility in staffing deployment. This would provide options to control personnel expenditures in the future, rather than only having the option of closing an entire Station.

Cost of Benefits

In addition to the items above, the items below were also discussed in the City Manager's General Fund Structural Deficit Elimination Plan. These items are significant cost areas in the City's budget and should be reviewed for cost savings potential and where the City may be out of alignment with its comparables.

Retirement Benefits--Pension

The retirement benefit is the most expensive benefit provided to employees. The City has two retirement plans: the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System. Based upon the current contribution rates, the City will contribute approximately \$138 million into the two retirement plans in Fiscal Year 2009-2010, \$65 million for the Police & Fire Plan and \$73 million for the Federated Plan. The City recognizes that this is a very important benefit that has significant cost implications, which is why we must ensure that the costs of retirement benefits are sustainable in the long-term.

The City's contributions to the retirement plan are established by the retirement boards and are based on many factors, including the cost-sharing arrangement between the City and employees and the level of benefits provided. Increases in the City's contribution rates can occur for various reasons, including retirement benefit enhancements. A decline in the assets of the retirement funds can also result in increased City contribution rates because currently the City pays 100% of the unfunded pension liability.

In an Information Memorandum dated November 14, 2008, the City Council was advised that the two retirement plans had experienced a significant decline in assets as a result of the market decline. Retirement plans throughout the country have also experienced significant losses. The information provided by the retirement boards and their actuaries regarding the decline in assets and projected contribution rates is important in budget planning and forecasting.

Both the City and employees make contributions for retirement benefits which are calculated as a percentage of payroll. Although employees do contribute to the pension system, as noted above, 100% of the unfunded pension benefit liability is currently paid for by the City. This is one of the reasons that the City's contribution rate is significantly higher than the employee contribution rate. The current contribution rates for the pension benefit (not including retiree healthcare benefits) for the Federated City Employees' Retirement System is 18.31% for the City and 4.28% for employees. The actuary for the Federated City Employees' Retirement System is preparing the actuarial valuation that will lead to the contribution rates for 2010-2011, and it is anticipated that information will be available in the upcoming months.

In an Information Memorandum dated September 18, 2009, the City Council was advised that the actuary for the Police and Fire Department Retirement Plan has issued two reports with projected contribution rates. The report from the actuary of the Police and Fire Department Retirement Plan has examined various scenarios for rate pension rate increases starting in Fiscal Year 2010-2011. Although the report contains pension contributions only, the chart below also includes retiree healthcare rates. The following shows the projected rate increases through 2013-2014 using the baseline pension contribute rate scenario.

Projected City Police and Fire Pension and Retiree Healthcare Contribution Rates					
	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14
Pension	22.50%	33.70%	34.90%	38.40%	46.00%
Retiree Healthcare ⁷	5.28%	6.66%	7.90%	9.15%	10.35%
Total Contributions	27.78%	40.36%	42.80%	47.55%	56.35%

Since the City is currently responsible for 100% of the unfunded pension benefit liability, the projections in the baseline scenario show no increase in the employee pension contribution rate of 8.3%. However, it should be noted that, unlike the pension benefit, the costs of retiree healthcare benefits are shared 50/50 by the City and employees (approximately 75/25 for dental).

It is important to note the pension contribution rates shown above are projections only and that the contribution rates for 2010-2011 have not been established. The actuary for the Police and

Fire Department Retirement Plan is preparing the actuarial valuation that will lead to the contribution rates for 2010-2011, as is the actuary for the Federated City Employees' Retirement System. The rates are anticipated to be established by the boards in the next several months. In order to provide a sense of the impact of increases to the City's contribution rate to the retirement plans, the chart below shows the current cost for each 1% change in the contribution rate, which is also known as a 100 basis point change.

Cost of 100 Basis Point Change (Based on Adopted Fiscal Year 2009-2010 Budget)			
	General Fund	Other Funds	All Funds
Federated	\$1,653,344	\$1,483,619	\$3,136,963
Police and Fire	\$2,458,915	\$0	\$2,458,915
Total	\$4,112,259	\$1,483,619	\$5,595,878

Due to the significant cost to the City, the Administration will be exploring alternatives for creating sustainable retirement benefits. Since pension benefits are often considered vested, there are limitations on what can be changed. Therefore, as identified in the General Fund Structural Deficit Elimination Plan, the Administration will be looking at different benefits for new employees that still provide an adequate retirement benefit at a more sustainable long-term cost.

Retirement Benefits—Retiree Healthcare

During 2009, the City and almost all of the bargaining units engaged in negotiations on retiree healthcare benefits. At that time, the estimated unfunded liability for retiree healthcare benefits was estimated to be as high as \$1.4 billion and funding retiree healthcare was a significant financial challenge for both the City and employees. The retirement plan provides for the costs of retiree medical to be split 50/50 by the City and employees (approximately 75/25 for dental).

The Administration has been working with our bargaining units in addressing the significant unfunded liability for retiree healthcare benefits. We have begun a five-year phase-in to fully pre-funding retiree healthcare benefits for employees represented by all City bargaining units except for the San Jose Fire Fighters union.⁷ This will result in an incremental increase in retiree healthcare contributions for both the City and employees over the next five years. It is important to note that full pre-funding of retiree healthcare benefits does not mean that the existing liability is paid off immediately. It will take 30 years to pay off the existing unfunded retiree healthcare liability. As is the norm with actuarial estimates, if the underlying assumptions used to determine the retiree healthcare liability prove to be too optimistic, additional unfunded liabilities would also be created, requiring more time for the liability to be paid off.

In addition, the City reached an agreement with seven of the City's bargaining units on a reopener to commence meeting and conferring on retiree healthcare benefits for future

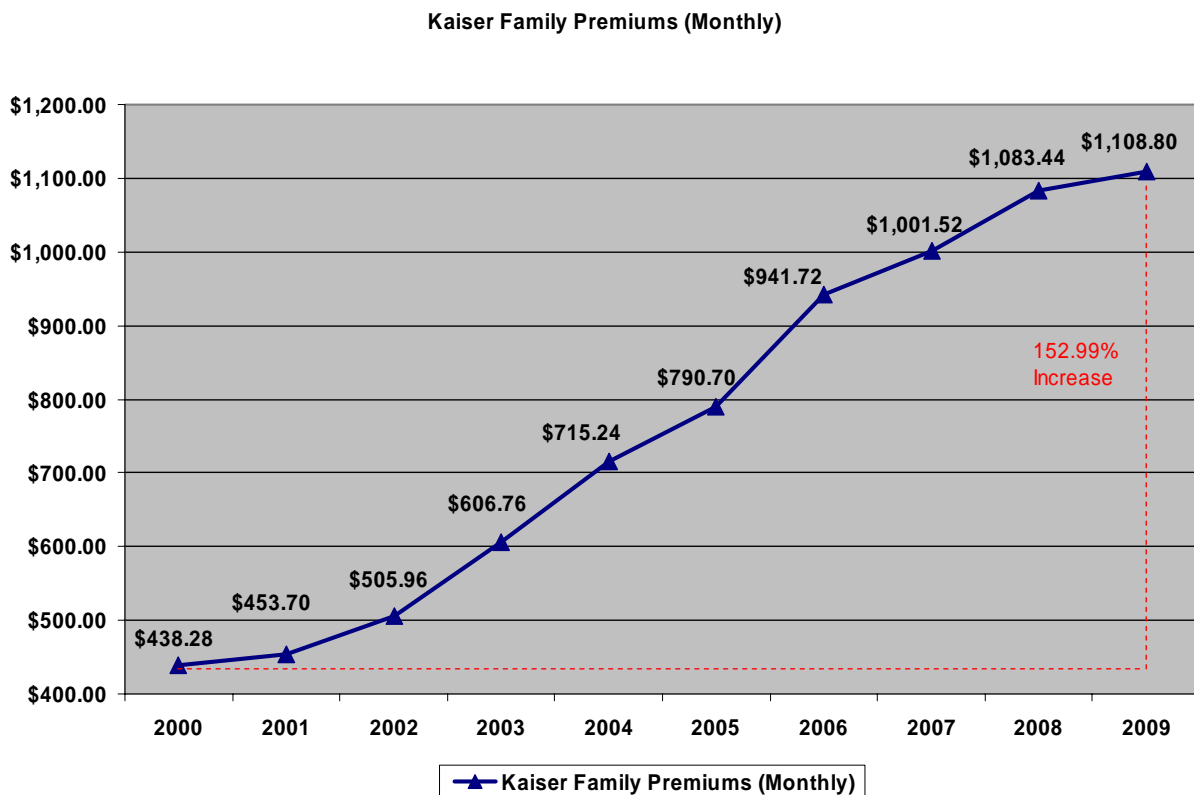
⁷ The City and the International Association of Fire Fighters, Local 230 are currently in the negotiation process for a successor memorandum of agreement and no agreement to begin phasing in to fully pre-funding retiree healthcare has been reached.

employees and a medical reimbursement program for future retirees in January 2010. As part of the agreements with five of those bargaining units on a “true wage freeze,” this agreement was extended to January 2011. For the Operating Engineers, Local No. 3, the Association of Building, Mechanical and Electrical Inspectors (ABMEI), the International Brotherhood of Electrical Workers (IBEW) and the San Jose Police Officers’ Association (SJPOA), these topics will be discussed in upcoming negotiations. Retiree Healthcare benefits for future employees, as well as funding, is a topic in the current negotiation process with the San Jose Fire Fighters.

Medical Benefits

On August 4, 2009, the City Council approved an audit of employee medical benefits conducted by the Office of the City Auditor. This audit contained several recommendations for changes to be negotiated with the City’s bargaining units that are expected to result in substantial savings.

This audit stated that as medical expenses continue to rise, the City is pressured into identifying new strategies to minimize the impact of rising medical insurance costs. The following chart shows the significant rise in the Kaiser Family Monthly Premiums over the last ten years.



As shown above, from 2000 to 2009, the monthly premium has increased 152.99%. There were several strategies identified by the audit where the City could preserve essential medical benefits while significantly reducing costs. Those are as follows:

- Prohibit employees from being simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee.

- Reduce cash in-lieu payment amounts.
- Prohibit participation in the Health In-Lieu Plan among City employees who are already receiving other City-provided medical benefits.
- Continue to explore an in-lieu program for qualified City retirees who suspend their medical benefits. This strategy is currently scheduled for discussion with five of the City's bargaining units in a re-opener on retiree healthcare benefits for January 2011.

The audit also identified that medical insurance expenses continue to increase at rates that exceed most public employers' revenue growth. It stated that the City should consider further promoting cost-sharing among employees and pursuing alternative plan designs for employee medical benefits.

Currently, ten of the City's eleven bargaining units have a 90/10 cost sharing split, with City paying 90% of the premium for the lowest cost health plan, single or family, and the employee paying 10%. The San Jose Fire Fighters is the only remaining bargaining unit that still has a \$150 monthly cap on the 90/10 cost sharing split. This issue is included in the current negotiation process with the San Jose Fire Fighters.

In addition, the City for many years has had health plans with no co-pays. The City now has a \$10 co-pay plan, however, that is still considered a modest co-pay.

The audit identified the following cost-sharing ideas with employees and alternative plan designs for employee medical benefits for consideration:

- Increasing employees' share of medical premiums
- Introducing a new lower premium medical plan (deductible plan)
- Increasing medical co-pays

The recommendations in the audit will be further evaluated for consideration during the upcoming negotiations.

Labor Negotiations Background

The City negotiates in accordance with various laws, regulations and City policies, as explained below.

Guiding Principles for Labor Negotiations

In June of 2007, the City Council approved guiding principles for labor negotiations, which aligned the approach to bargaining with the priorities established by both the Council and the community. The Guiding Principles for Labor Negotiations are attached (Attachment A).

Council Policy- Labor Negotiation Guidelines

In March of 2008, the City Council approved a Council Policy on Labor Negotiation Guidelines, which applies to the Mayor, members of the City Council and Mayor and Council Staff. The purpose of the policy is to set guidelines for the City Council and Council staff to ensure labor

negotiations are conducted in good faith and to avoid actions that would circumvent the City's designated bargaining team. The Council Policy- Labor Negotiation Guidelines are attached (Attachment B).

Meyers-Milias-Brown Act (MMBA)

The MMBA governs the labor-management relations in California local government, including cities, counties, and most special districts. The MMBA provides the right to organize, sets guidelines for such things as the scope of representation and the requirement to meet and confer in good faith.

The MMBA states that the governing body of a public agency shall meet and confer in good faith regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations (i.e. unions/bargaining units).

Although it is commonly referred to as an obligation to "negotiate", the MMBA refers to the obligation to "meet and confer" in good faith. The MMBA defines meeting and conferring in good faith as having the mutual obligation to personally meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals and to endeavor to reach agreement on matters within the scope of representation.

The MMBA defines the scope of representation as all matters related to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

City of San Jose Employer-Employee Relations Resolution (#39367)

In addition to the MMBA, the City of San Jose has local rules that govern collective bargaining between the City and the recognized bargaining units that represent City employees.

Section 21 of Resolution #39367 designates the City Manager as the Municipal Employee Relations Officer. As such, the City Manager is the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment. Resolution #39367 also authorizes the City Manager to delegate these duties and responsibilities to an Employee Relations Officer or other members of his/her staff.

Negotiation/"Meet and Confer" Process

As mentioned above, under the Meyers-Milias-Brown Act (MMBA), the City has an obligation to "meet and confer" in good faith with the City's bargaining units regarding wages, hours and other terms and conditions of employment. The City Manager has delegated the authority to meet and confer to the Office of Employee Relations. The negotiations for a new union contract commence prior to the expiration of an existing Memorandum of Agreement (MOA). The City

and the Union each establish a negotiating team. Resolution #39367 provides for paid release time for up to three bargaining unit team members for time spent during the negotiation meetings that coincide with the employees' normal work hours.

During the negotiations, the City team meets with the union team to discuss various issues and interests for the new contract. The City's negotiating team is provided negotiation authorization by the City Council through the City Manager. Proposals are exchanged related to the issues presented during the negotiations. Tentative agreements are often reached on individual issues as part of the negotiation process and ultimately, a tentative agreement is reached on the entire contract. All tentative agreements are contingent upon ratification of the union membership and approval of the City Council in open session.

If negotiations do not result in a tentative agreement on a new contract, Resolution #39367 states that impasse procedures may be invoked by either party and provides for mediation as the impasse procedure. If mediation assists the parties in reaching an agreement, it is still contingent upon ratification of the union membership and approval of the City Council in open session.

It is the goal of both parties to reach a negotiated agreement. However, the MMBA states that a public agency may, after impasse procedures have been exhausted, implement its last, best, and final offer. In addition, after mediation has been concluded and an agreement has not been reached on a new contract, the bargaining unit has the right to strike and/or engage in other protected concerted activity, except for police officers and fire fighters who do not have the right to strike.

For the San Jose Police Officers' Association (POA) and the San Jose Fire Fighters (IAFF, Local 230), if the parties fail to reach agreement after participating in mediation, City Charter Section 1111, approved by the voters in 1980, provides for an Arbitration Board, comprised of a City representative, Union representative, and a neutral arbitrator selected by the City representative and Union representative, to decide each issue by majority vote. The results of arbitration are binding.

2009-2010 Labor Negotiations

During the remainder of 2009 and through 2010, the City will be negotiating with the following bargaining units:

San Jose Fire Fighters, IAFF Local 230 (IAFF)

San Jose Fire Fighters, IAFF Local 230 represents approximately 739 Full Time Equivalents (FTEs), from the classifications of Firefighter to Battalion Chief. The San Jose Fire Fighter's union contract expired June 30, 2009. Negotiations began in April 2009 and since that date, the City and San Jose Fire Fighters, IAFF Local 230 have only had 5 negotiation sessions. Despite those negotiation sessions, no tentative agreements were reached. Impasse was declared on September 10, 2009, and the City and San Jose Fire Fighters, IAFF Local 230 engaged in mediation on September 30, 2009. An agreement was not reached in mediation and the City and the San Jose Fire Fighters are proceeding to arbitration. However, an additional mediation

session is scheduled prior to arbitration in order to continue efforts to reach an agreement on a new contract.

Association of Building, Mechanical and Electrical Inspectors (ABMEI)

ABMEI represents approximately 57 Full Time Equivalents (FTEs), including the classifications of Building Inspector and Supervising Building Inspector. ABMEI's contract expires December 10, 2009, and negotiations with ABMEI are expected to begin in October 2009.

International Brotherhood of Electrical Workers (IBEW)

IBEW represents approximately 81 Full Time Equivalents (FTEs), including classifications of Electrician and Senior Electrician. IBEW's contract expires March 6, 2010, and negotiations with IBEW are expected to begin in January 2010.

Association of Legal Professionals of San Jose (ALP)

ALP is a new bargaining unit and has no current contract. They represent approximately 46 Full Time Equivalents (FTEs), including the classifications of Deputy City Attorney and Senior Deputy City Attorney. Although ALP does not have a current contract, any changes to wages or benefits that are mandatory subjects of bargaining would have to go through the negotiation process.

San Jose Police Officers' Association (SJPOA)

SJPOA represents approximately 1375 Full Time Equivalents (FTEs), from the classifications of Police Recruit to Deputy Police Chief. SJPOA's contract expires on June 30, 2010, and negotiations with SJPOA are expected to begin in January 2010.

Operating Engineers, Local No. 3 (OE#3)

OE#3 represents approximately 817 Full Time Equivalents (FTEs), including the classifications of Maintenance Assistant, Park Ranger and Parking and Traffic Control Officer. OE#3's contract expired on April 17, 2009, and negotiations did not result in an agreement. Impasse was declared and the City Council approved the implementation of various items for employees represented by OE#3 for Fiscal Year 2009-2010. Although OE#3 does not have a current contract, any changes to wages or benefits that are mandatory subjects of bargaining would have to go through the negotiation process.

Association of Engineers and Architects, IFPTE Local 21 (AEA) – Unit 41/42 and Unit 43

AEA represents approximately 236 Full Time Equivalents (FTEs), in two different units, including the classifications of Engineer, Architect, Senior Engineer and Senior Architect. AEA's contract expires June 30, 2010, and negotiations with AEA are expected to begin in January 2010.

Association of Maintenance Supervisory Personnel (AMSP)

AMSP represents approximately 86 Full Time Equivalents (FTEs), including the classifications of Building Maintenance Superintendent and Building Services Supervisor. AMSP's contract expires June 30, 2010, and negotiations with AMSP are expected to begin in early 2010.

City Association of Management Personnel (CAMP)

CAMP represents approximately 410 Full Time Equivalents (FTEs), including the classifications of Senior Analyst and Program Manager. CAMP's contract expires June 30, 2010, and negotiations with CAMP are expected to begin in early 2010.

Transparency/Sunshine Reform

Direction and authority to the City Manager and the City's negotiating team is provided in closed session by the City Council. These annual reports are to provide the public with information related to labor negotiations, prior to that authorization being given and the negotiation process being completed in order to provide an opportunity for the public to give input to the City Council.

Also as part of the Sunshine Reform, the City is providing the public with much more information on the City's internet than it has in the past. This includes information related to ongoing negotiations, costs of benefits and other payroll costs. The link to this website is: <http://www.sanjoseca.gov/employeeRelations/labor.asp>.

Conclusion

There is no question that in facing a potential \$91.5 million budget shortfall in the General Fund and the fiscal difficulty facing other City funds, the City Council will be faced with very difficult decisions. A major consideration this year will be controlling or reducing personnel costs in order to lessen the elimination/reduction of City services.

By continuing to partner with the City's bargaining units, we can work toward solutions that will eliminate the structural deficit and lessen service reductions/eliminations.

EVALUATION AND FOLLOW-UP

When Tentative Agreements are reached with the bargaining units during contract negotiations for a new contract, they will be brought to Council in open session for approval.

PUBLIC OUTREACH/INTEREST



Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)

- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item is being provided in accordance with the Sunshine Ordinance and is requesting acceptance by Council on a report on upcoming Labor Negotiations. In order to provide the public with information about the City's labor negotiations, this report will be posted on the internet and will be sent out in Early Distribution. Bargaining unit representatives were notified of this agenda item in advance and a meeting has been scheduled with them to discuss. A copy will be sent to them as soon as the memo has been distributed.

COORDINATION

This memo has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

CEQA

Not a project.


Debra Figone
City Manager

For questions please contact Alex Gurza, Director of Employee Relations, at 535-8155.

Attachment A: Guiding Principles for Labor Negotiations (adopted June 12, 2007)

Attachment B: Council Policy on Labor Negotiation Guidelines (approved March 4, 2008)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Les White

SUBJECT: See Below

DATE: May 31, 2007

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: GUIDING PRINCIPLES FOR LABOR NEGOTIATIONS

RECOMMENDATION

Approve the guiding principles for labor negotiations.

OUTCOME

Adoption of the guiding principles for labor negotiations.

BACKGROUND

In accordance with the Mayor's March Budget Message, the proposed budget for Fiscal Year 2007-2008, responds to the priorities of both the community and the City Council, while addressing the sixth consecutive year of a multi-million dollar General Fund shortfall. However, projected growth in personal service costs continues to out-pace revenue growth through Fiscal Year 2011-2012.

Personal service costs account for two-thirds of the total General Fund uses. The increase of approximately 45% in the average budgeted position cost from 2000 to present can be attributed to three main cost components: salary, health care benefits and pension benefits. Along with the budget shortfalls already predicted for the next five fiscal years and the continued increases in cost for current employee salaries and benefits, liability for post-employment health care benefits for retirees has been estimated to be as high as \$1.4 billion.

Salaries and benefits are determined through the negotiation process with the City's bargaining units. In order to address the significant issues identified above, the City should be guided by principles in labor negotiations in order to remain mindful of the service needs of the City and the continued fiscal challenges.

ANALYSIS

One of the primary functions of the City is to provide services to the community. Accordingly, 2/3 of the General Fund is allocated to personal services. However, personal services costs have risen significantly during a time of serious fiscal challenges. Fiscal Year 2007-2008 marks the sixth consecutive year of budget shortfalls, with projected shortfalls in the next four years.

As the City continues to explore innovative methods to bridge the gap between revenue and expenses, it is important to partner with our bargaining units in addressing these ongoing costs. Although it is very important to work together with our employees and bargaining unit representatives on collaborative efforts on an on-going basis, the cost of salaries and benefits of bargaining unit employees are determined through the contract negotiation process. These negotiations occur prior the expiration of the eleven agreements with the bargaining units. These agreements expire at different times and in different years.

The following guiding principles are being presented for consideration related to present and future labor negotiations:

- *Focus on the cost of total compensation¹ while considering the City's fiscal condition, revenue growth, and changes in the Consumer Price Index*
- *Use short-term and long-term strategies to address increasing benefit costs such as wellness programs, cost containment initiatives, etc.*
- *Maintain a consistent approach to bargaining through clear, ongoing communication of policy direction among City Council and City staff*
- *Remain mindful of increasing costs, including the retiree healthcare liability*
- *To the extent possible, preserve the City's market competitiveness as an employer*
- *Efficiently and effectively provide services that align with both the priorities of the community and the City Council*

These guiding principles will align the approach to bargaining with the priorities established by both the Council and the community.

PUBLIC OUTREACH/INTEREST

The purpose of this section is to describe discussions that have occurred with the public, stakeholders, community groups and/or other governmental agencies. Staff will be asked to use the following checklist to determine if items are to be considered items of "Significant Public Interest", thus requiring additional notification per the matrix below. Please note the outreach that was done.

¹ Total Compensation includes the total costs of a position including salary, pension, and all other benefits.

May 31, 2007

Subject: Guiding Principles

Page 3 of 3

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Public Outreach does not apply to the item; however, this memorandum will be placed on the City website for the June 12, 2007 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and Office of Employee Relations. A meeting is scheduled with the City Labor Alliance (CLA) to review these principles and receive comments.

CEQA

Not a project.


LES WHITE
City Manager

For questions please contact me at 535-8111.

COUNCIL POLICY

TITLE COUNCIL LABOR NEGOTIATION GUIDELINES	PAGE 1 of 2	POLICY NUMBER 0-39
EFFECTIVE DATE March 4, 2008	REVISED DATE	
APPROVED BY COUNCIL ACTION		3/4/2008, Item 3.6, Res. No. 74265

BACKGROUND

Collective bargaining is governed by the Meyers-Milias-Brown Act (MMBA), the City of San José Employer-Employee Relations Resolution (#39367) and the City Charter. The City Charter designates the City Manager as the chief administrative officer of the City. Accordingly, Resolution #39367 delegates the authority to negotiate labor contracts on behalf of the City to the City Manager or the City Manager's designee.

Pursuant to the Meyers-Milias-Brown Act, the City has a right to insist that contract negotiations take place at the bargaining table between the designated representatives of the City and the designated representatives of the various bargaining unit employees. Members of the City Council should refrain from negotiating directly with employee representatives. Both the City and the bargaining units have an obligation under applicable laws to negotiate in good faith.

As used in this policy, "negotiate" means to meet and confer with another to endeavor to reach agreement on matters within the scope of representation.

PURPOSE

This policy applies only to the Mayor, members of the City Council and Mayor and Council staff.

References in this policy to members of the City Council or Council staff include the Mayor and Mayor's staff.

The purpose of this policy is to set guidelines for the City Council and Council staff to ensure labor negotiations are conducted in good faith and to avoid actions that would circumvent the City's designated bargaining team.

POLICY

It is the policy of the City Council that all of its members and staff shall abide by the following guidelines when the City Manager or the City Manager's designee is in negotiations with any bargaining unit:

1. Pursuant to San José Resolution #39367, negotiations are conducted by the City Manager through his/her designee. Accordingly, negotiations regarding potential proposals and possible settlement shall occur between the City's designated negotiator(s) and the union's designated negotiator(s).
2. Pursuant to Section 411 of the City Charter, while the Council may express its views to the City Manager, the Council shall not interfere with the execution by the City Manager of his or her authority and duty to negotiate on behalf of the City.
3. Members of the City Council or Council staff shall not negotiate with the bargaining unit representatives or persons acting on their behalf.
4. Nothing in this policy shall prohibit members of the City Council or Council staff from listening to bargaining unit representatives or persons acting on their behalf. Members of the City Council shall not knowingly respond to or discuss any proposals not presented to the negotiating team or any confidential closed session discussion.

TITLE	COUNCIL LABOR NEGOTIATION GUIDELINES	PAGE	POLICY NUMBER
		2 of 2	0-39

5. Members of the City Council and City Council staff shall disclose to the City Manager and to the entire City Council material communications regarding issues related to ongoing negotiations. (See Council Policy 0-32 regarding disclosure of material facts).
6. Authorization and direction to the City's negotiating team is provided in closed session. In order to maintain the integrity of the negotiation process, such authorization must remain confidential.